

AMENDED IN SENATE AUGUST 8, 2002

AMENDED IN ASSEMBLY APRIL 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 3035

**Introduced by Committee on Judiciary (Corbett (Chair), Dutra,
Jackson, Longville, Shelley, Steinberg, and Wayne)**

March 12, 2002

An act to amend Sections 11125, 11125.1, 11135, 54954.1, 54954.2, and 54957.5 of, and to add Sections 11123.1 and 54953.2 to, the Government Code, relating to access to government programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 3035, as amended, Committee on Judiciary. Access to government programs.

(1) The Bagley-Keene Open Meeting Act generally requires that all meetings of a state body be open and public. Writings that are public records and are distributed to members of the state body prior to or during a public meeting, pertaining to any item to be considered during the public meeting, are required to be made available for public inspection, and any person may attend any public meeting of a state body. The act also requires that notice of public meetings and those held in closed session of a state body be given to any person who requests that notice in writing and that the agenda for those meetings be made available upon request without delay.

This bill would require that the notices and agendas of these public meetings and closed sessions and the public records distributed at these public meetings and closed sessions be made available in appropriate

alternative formats upon request by any person with a disability consistent with the federal Americans with Disabilities Act of 1990. The bill would also require that the notice include information on the availability of disability-related aids or services to enable the person to participate in a public meeting consistent with the federal Americans with Disabilities Act of 1990.

(2) Existing law provides that no person in this state shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

This bill would extend the prohibited basis of discrimination under this provision to include race and national origin consistent with the federal Americans with Disabilities Act of 1990.

(3) The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public. All persons may attend these meetings except as otherwise provided by the act. The act also requires that the agenda be posted and include a general description of items to be discussed in closed session. All the documents constituting the agenda packet of a public meeting, including any other writings distributed to all or a majority of all of the members of a legislative body of a local agency by any person in connection with a matter to be discussed at the public meeting, are required to be made available to any person upon request.

This bill would require that these agendas, agenda packets, and other writings distributed to members of a legislative body be made available in appropriate alternative formats to persons with a disability and that the agendas include information on the availability of disability-related aids or services to enable the person to participate in the public meeting consistent with the federal Americans with Disabilities Act of 1990.

(4) *This bill would incorporate changes in Section 11125.1 of the Government Code proposed by AB 1752 that would become operative if both bills are enacted and this bill is enacted last.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. Section 11123.1 is added to the Government Code, to read:

11123.1. All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

SEC. 2. Section 11125 of the Government Code is amended to read:

11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

SEC. 3. Section 11125.1 of the Government Code is amended to read:

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal

1 rules and regulations adopted in implementation thereof, upon
2 request by a person with a disability.

3 (c) In the case of the Franchise Tax Board, prior to that state
4 body taking final action on any item, writings pertaining to that
5 item that are public records under subdivision (a) that are
6 distributed to members of the state body by board staff or
7 individual members prior to or during a meeting shall be: (1) made
8 available for public inspection at that meeting, (2) distributed to
9 all persons who request notice in writing pursuant to subdivision
10 (a) of Section 11125, and (3) made available on the Internet.

11 (d) Nothing in this section shall be construed to prevent a state
12 body from charging a fee or deposit for a copy of a public record
13 pursuant to Section 6253, except that no surcharge shall be
14 imposed on persons with disabilities in violation of Section 202 of
15 the Americans with Disabilities Act of 1990 (42 U.S.C. Sec.
16 12132), and the federal rules and regulations adopted in
17 implementation thereof. The writings described in subdivision (b)
18 are subject to the requirements of the California Public Records
19 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
20 of Title 1), and shall not be construed to limit or delay the public's
21 right to inspect any record required to be disclosed by that act, or
22 to limit the public's right to inspect any record covered by that act.
23 This section shall not be construed to be applicable to any writings
24 solely because they are properly discussed in a closed session of
25 a state body. Nothing in this article shall be construed to require a
26 state body to place any paid advertisement or any other paid notice
27 in any publication.

28 (e) "Writing" for purposes of this section means "writing" as
29 defined under Section 6252.

30 *SEC. 3.5. Section 11125.1 of the Government Code is*
31 *amended to read:*

32 11125.1. (a) Notwithstanding Section 6255 or any other
33 provisions of law, agendas of public meetings and other writings,
34 when distributed to all, or a majority of all, of the members of a
35 state body by any person in connection with a matter subject to
36 discussion or consideration at a public meeting of the body, are
37 disclosable public records under the California Public Records Act
38 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
39 Title 1), and shall be made available upon request without delay.
40 However, this section shall not include any writing exempt from

1 public disclosure under Section 6253.5, 6254, or 6254.7 of this
2 code, or Section 489.1 or 583 of the Public Utilities Code.

3 (b) Writings that are public records under subdivision (a) and
4 that are distributed to members of the state body prior to or during
5 a meeting, pertaining to any item to be considered during the
6 meeting, shall be made available for public inspection at the
7 meeting if prepared by the state body or a member of the state
8 body, or after the meeting if prepared by some other person. *These*
9 *writings shall be made available in appropriate alternative*
10 *formats, as required by Section 202 of the Americans with*
11 *Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal*
12 *rules and regulations adopted in implementation thereof, upon*
13 *request by a person with a disability.*

14 (c) In the case of the Franchise Tax Board, prior to that state
15 body taking final action on any item, writings pertaining to that
16 item that are public records under subdivision (a) that are
17 distributed to members of the state body by board staff or
18 individual members prior to or during a meeting shall be: ~~(1) made~~

19 *(1) Made available for public inspection at that meeting, (2)*
20 *distributed meeting.*

21 *(2) Distributed to all persons who request notice in writing*
22 *pursuant to subdivision (a) of Section 11125, and (3) made 11125.*

23 *(3) Made available on the Internet.*

24 (d) *Prior to the State Board of Equalization taking final action*
25 *on any item that does not involve a named tax or fee payer, writings*
26 *pertaining to that item that are public records under subdivision*
27 *(a) that are prepared and distributed by board staff or individual*
28 *members to members of the state body prior to or during a meeting*
29 *shall be:*

30 *(1) Made available for public inspection at that meeting.*

31 *(2) Distributed to all persons who request or have requested*
32 *copies of these writings.*

33 *(3) Made available on the Internet.*

34 (e) Nothing in this section shall be construed to prevent a state
35 body from charging a fee or deposit for a copy of a public record
36 pursuant to Section ~~6257~~ 6253, *except that no surcharge shall be*
37 *imposed on persons with disabilities in violation of Section 202 of*
38 *the Americans with Disabilities Act of 1990 (42 U.S.C. Sec.*
39 *12132), and the federal rules and regulations adopted in*
40 *implementation thereof.* The writings described in subdivision (b)

are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

~~(e)~~

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

SEC. 4. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

SEC. 5. Section 54953.2 is added to the Government Code, to read:

54953.2. All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of

1 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
2 adopted in implementation thereof.

3 SEC. 6. Section 54954.1 of the Government Code is amended
4 to read:

5 54954.1. Any person may request that a copy of the agenda,
6 or a copy of all the documents constituting the agenda packet, of
7 any meeting of a legislative body be mailed to that person. If
8 requested, the agenda and documents in the agenda packet shall be
9 made available in appropriate alternative formats to persons with
10 a disability, as required by Section 202 of the Americans with
11 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal
12 rules and regulations adopted in implementation thereof. Upon
13 receipt of the written request, the legislative body or its designee
14 shall cause the requested materials to be mailed at the time the
15 agenda is posted pursuant to Section 54954.2 and 54956 or upon
16 distribution to all, or a majority of all, of the members of a
17 legislative body, whichever occurs first. Any request for mailed
18 copies of agendas or agenda packets shall be valid for the calendar
19 year in which it is filed, and must be renewed following January
20 1 of each year. The legislative body may establish a fee for mailing
21 the agenda or agenda packet, which fee shall not exceed the cost
22 of providing the service. Failure of the requesting person to receive
23 the agenda or agenda packet pursuant to this section shall not
24 constitute grounds for invalidation of the actions of the legislative
25 body taken at the meeting for which the agenda or agenda packet
26 was not received.

27 SEC. 7. Section 54954.2 of the Government Code is amended
28 to read:

29 54954.2. (a) At least 72 hours before a regular meeting, the
30 legislative body of the local agency, or its designee, shall post an
31 agenda containing a brief general description of each item of
32 business to be transacted or discussed at the meeting, including
33 items to be discussed in closed session. A brief general description
34 of an item generally need not exceed 20 words. The agenda shall
35 specify the time and location of the regular meeting and shall be
36 posted in a location that is freely accessible to members of the
37 public. If requested, the agenda shall be made available in
38 appropriate alternative formats to persons with a disability, as
39 required by Section 202 of the Americans with Disabilities Act of
40 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations



1 adopted in implementation thereof. The agenda shall include
2 information regarding how, to whom, and when a request for
3 disability-related modification or accommodation, including
4 auxiliary aids or services may be made by a person with a disability
5 who requires a modification or accommodation in order to
6 participate in the public meeting.

7 No action or discussion shall be undertaken on any item not
8 appearing on the posted agenda, except that members of a
9 legislative body or its staff may briefly respond to statements made
10 or questions posed by persons exercising their public testimony
11 rights under Section 54954.3. In addition, on their own initiative
12 or in response to questions posed by the public, a member of a
13 legislative body or its staff may ask a question for clarification,
14 make a brief announcement, or make a brief report on his or her
15 own activities. Furthermore, a member of a legislative body, or the
16 body itself, subject to rules or procedures of the legislative body,
17 may provide a reference to staff or other resources for factual
18 information, request staff to report back to the body at a subsequent
19 meeting concerning any matter, or take action to direct staff to
20 place a matter of business on a future agenda.

21 (b) Notwithstanding subdivision (a), the legislative body may
22 take action on items of business not appearing on the posted
23 agenda under any of the conditions stated below. Prior to
24 discussing any item pursuant to this subdivision, the legislative
25 body shall publicly identify the item.

26 (1) Upon a determination by a majority vote of the legislative
27 body that an emergency situation exists, as defined in Section
28 54956.5.

29 (2) Upon a determination by a two-thirds vote of the members
30 of the legislative body present at the meeting, or, if less than
31 two-thirds of the members are present, a unanimous vote of those
32 members present, that there is a need to take immediate action and
33 that the need for action came to the attention of the local agency
34 subsequent to the agenda being posted as specified in subdivision
35 (a).

36 (3) The item was posted pursuant to subdivision (a) for a prior
37 meeting of the legislative body occurring not more than five
38 calendar days prior to the date action is taken on the item, and at
39 the prior meeting the item was continued to the meeting at which
40 action is being taken.

1 SEC. 8. Section 54957.5 of the Government Code is amended
2 to read:

3 54957.5. (a) Notwithstanding Section 6255 or any other
4 provisions of law, agendas of public meetings and any other
5 writings, when distributed to all, or a majority of all, of the
6 members of a legislative body of a local agency by any person in
7 connection with a matter subject to discussion or consideration at
8 a public meeting of the body, are disclosable public records under
9 the California Public Records Act (Chapter 3.5 (commencing with
10 Section 6250) of Division 7 of Title 1), and shall be made available
11 upon request without delay. However, this section shall not include
12 any writing exempt from public disclosure under Section 6253.5,
13 6254, 6254.7, or 6254.22.

14 (b) Writings that are public records under subdivision (a) and
15 that are distributed during a public meeting shall be made available
16 for public inspection at the meeting if prepared by the local agency
17 or a member of its legislative body, or after the meeting if prepared
18 by some other person. These writings shall be made available in
19 appropriate alternative formats upon request by a person with a
20 disability, as required by Section 202 of the Americans with
21 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal
22 rules and regulations adopted in implementation thereof.

23 (c) Nothing in this chapter shall be construed to prevent the
24 legislative body of a local agency from charging a fee or deposit
25 for a copy of a public record pursuant to Section 6253, except that
26 no surcharge shall be imposed on persons with disabilities in
27 violation of Section 202 of the Americans with Disabilities Act of
28 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
29 adopted in implementation thereof.

30 (d) This section shall not be construed to limit or delay the
31 public's right to inspect or obtain a copy of any record required to
32 be disclosed under the requirements of the California Public
33 Records Act (Chapter 3.5 (commencing with Section 6250) of
34 Division 7 of Title 1). Nothing in this chapter shall be construed
35 to require a legislative body of a local agency to place any paid
36 advertisement or any other paid notice in any publication.

37 SEC. 9. *Section 3.5 of this bill incorporates amendments to*
38 *Section 11125.1 of the Government Code proposed by both this bill*
39 *and AB 1752. It shall only become operative if (1) both bills are*
40 *enacted and become effective on or before January 1, 2003, (2)*

- 1 *each bill amends Section 11125.1 of the Government Code, and (3)*
- 2 *this bill is enacted after AB 1752, in which case Section 3 of this*
- 3 *bill shall not become operative.*

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